

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN BYRNES, JR.,

08 civ. 00086 (SCR)

Plaintiff,

-against-

ANSWER

STEVEN BRESCIA, LINDA CANTIELLO,
ROBERT KIERAN, DARLENE ANDOLSEK,
JOANNE SCHEELS, VILLAGE OF MONTGOMERY,

Defendant.
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S I R S:

Defendants, Steven Brescia, Linda Cantiello, Darlene Andolsek, Joanne Scheels, and the Village of Montgomery, by their attorneys, **Hodges, Walsh & Slater, LLP**, as and for their Response to plaintiffs' Amended Complaint, upon information and belief, state the following:

I. **PARTIES**

FIRST: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1" of the Plaintiff's Amended Complaint.

SECOND: Deny each and every allegation contained in paragraph "5" of the Plaintiff's Amended Complaint.

II. **JURISDICTION**

THIRD: Deny each and every allegation contained in paragraph "6" of the Plaintiff's Amended Complaint.

III. STATEMENT OF FACTS

FOURTH: Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "7", "15", "17", "18", "19", "20", "22", "25", "26", "30", "31", "32", "33", "34", "35" and "36" of the Plaintiff's Amended Complaint.

FIFTH: Deny each and every allegation contained in paragraphs "8", "9", "10", "11", "12", "14", "16", "23", "24", "27", "28", "29", "37", "38", "39", "40", "41" and "42" of the Plaintiff's Amended Complaint.

SIXTH: Deny each and every allegation contained in paragraph "13" of the Plaintiff's Amended Complaint and refers all questions of law to this Court.

IV. CAUSES OF ACTION

SEVENTH: Defendants, Steven Brescia, Linda Cantiello, Darlene Andolsek, Joanne Scheels, and the Village of Montgomery repeat and reallege each and every denial set forth in paragraphs "1" through "42" of Plaintiff's Amended Complaint with the same force and effect as if fully set forth at length herein.

EIGHTH: Deny each and every allegation contained in paragraphs "44", "45", "46" and "47" of the Plaintiff's Amended Complaint and refers all questions of law to this Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

NINTH: The plaintiff's complaint fails to state a cause of action and/or claim upon which relief may be granted as to defendants Steven Brescia, Linda Cantiello, Darlene Andolsek, Joanne Scheels and the Village of Montgomery.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

TENTH: The plaintiff's damages, if any, were caused and/or contributed to by reason of the culpable conduct of the plaintiff.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

ELEVENTH: The plaintiff's damages, if any, were created and caused, in whole or in part, by the plaintiff's failure to take steps to mitigate such damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

TWELFTH: Actions of the individual co-defendant Robert Kiernan, as claimed in plaintiffs' Complaint, if true, were not pursuant to municipal policy or custom and outside the scope of his duties as a municipal official.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

THIRTEENTH: The plaintiff's claims do not rise to the level of a constitutional violation as against these defendants.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

FOURTEENTH: The plaintiff's claim for punitive damages is barred by public policy and the laws of the State of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

FIFTEENTH: Actions of defendants towards plaintiffs were based on legitimate, non-retaliatory rationale.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

SIXTEENTH: If found to be true, these defendants had no knowledge of nor acquiesced in, nor subsequently condoned, any of the actions of co-defendant Kiernan claimed in plaintiff's Complaint.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

SEVENTEENTH: Plaintiff has failed to exhaust available administrative remedies.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

EIGHTEENTH: Plaintiff has failed to exhaust remedies available to him under the Laws of the State of New York.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

NINETEENTH: The municipal defendant had no policy or custom which resulted in improper infringement of any rights of the plaintiff.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

TWENTIETH: No rights of the plaintiff were wrongfully infringed upon as the result of any indifference to such rights by any of the defendants.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

TWENTY-FIRST: The plaintiff did not suffer a materially adverse employment action as a result of the actions of the defendants.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

TWENTY-SECOND: The plaintiff's speech was not a matter of public concern.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

TWENTY-THIRD: The defendants are entitled to qualified immunity.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

TWENTY-FOURTH: The defendants are entitled to absolute immunity.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

TWENTY-FIFTH: The defendants acted in good faith and without malice.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

TWENTY-SIXTH: Plaintiff had no constitutionally protected right to the employment title he claims.

WHEREFORE, these answering defendants demand judgment dismissing the Complaint of the plaintiffs, together with costs and disbursements of this action.

DATED: White Plains, New York
August 12, 2009

Yours, etc.,

HODGES, WALSH & SLATER LLP

By: 

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